

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

14

DECISION

TOPIC

Notice of Intended Action: Chapters 23, 25 and 34: Air Quality Program
Rules – Rescission of vacated CAMR regulations and addition of new
mercury monitoring provisions

The Department is requesting permission from the Commission to proceed with the rulemaking process and publish a Notice of Intended Action to amend Chapter 23 "Emission Standards for Contaminants," Chapter 25 "Measurement of Emissions," and Chapter 34 "Provisions for Air Quality Emissions Trading Programs" of 567 Iowa Administrative Code (IAC).

At the October 2008 Commission meeting, the Department presented an information item proposing rule changes to remove from the state air quality rules EPA's Clean Air Mercury Rule (CAMR) provisions that the United States Court of Appeals for the District of Columbia Circuit (the D.C. Court) vacated. The D.C. Court found CAMR to be unauthorized under the federal Clean Air Act (CAA). Instead of proceeding with the rulemaking process, the Commission requested that the Department provide information regarding state regulatory options for addressing the vacatur of CAMR.

At the January 2009 Commission meeting, the Department presented an information item providing regulatory options for addressing the vacatur of CAMR. The Commission subsequently requested that the Department provide a presentation at the February Commission meeting explaining the mercury emissions monitoring methods that are currently available and the technical problems with the mercury monitoring provisions under the vacated CAMR regulations. The Commission also requested that the Department provide a Notice of Intended Action to remove all of the federal CAMR provisions from the IAC and a Notice of Intended Action to remove the federal CAMR provisions from the IAC but continue to require some type of mercury emissions monitoring.

Attached are two Notices of Intended Action for the Commission's decision. The first Notice removes the federal CAMR provisions from the state's administrative rules. No mercury monitoring requirements are included in this Notice. The second Notice also removes the federal CAMR provisions from the state's administrative rules but requires CAMR-affected Electrical Generating Units (EGUs) to conduct quarterly coal sampling analysis or stack testing for mercury using approved methods. Affected EGUs would not be required to continue to operate and collect data from the mercury continuous emissions monitors (CEMS) under either Notice, since the continuous mercury monitoring methods under the vacated CAMR rules have never been approved by EPA and have been shown to be inaccurate.

The specific rule amendments being proposed in both Notices are explained in the preamble of the attached Notices.

The Notice of Intended Action that is approved by the Commission will be published in the Iowa Administrative Bulletin on March 11, 2009. A public hearing will be held on Monday, April 13, 2009, at 1 p.m. at the Department's Air Quality Bureau offices. The public comment period for the proposed rules will close on Tuesday, April 14, 2009.

An administrative rule fiscal impact statement is attached. The fiscal impact statement addresses fiscal impacts from both Notices of Intended Action.

Christine Paulson
Environmental Specialist Senior
Program Development Section, Air Quality Bureau
Memo date: January 26, 2009

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action (Vacatur of CAMR)

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 23, “Emission Standards for Contaminants,” Chapter 25, “Measurement of Emissions,” and Chapter 34, “Provisions for Air Quality Emissions Trading Programs,” of the Iowa Administrative Code.

The purpose of the rule changes is to remove from the state air quality rules EPA’s Clean Air Mercury Rule (CAMR) provisions that the United States Court of Appeals for the District of Columbia Circuit (the D.C. Court) vacated. The D.C. Court found the regulations to be unauthorized under the federal Clean Air Act (CAA) or otherwise deficient.

The vacatur of this federal program has elicited uncertainty and confusion for regulated industries and for state and local air agencies. Although the D.C. Court vacated the federal regulations, the regulations were adopted by reference and therefore are still in effect and enforceable by the Department. The CAMR program was intended to reduce mercury emissions from coal-fired electrical steam generating units (EGUs) at the national level and was based upon participation in EPA-managed emissions trading programs. Since the federal regulations are vacated, EPA will not be running the trading program, thereby negating the need for Iowa to retain the associated federal regulations.

Item 1 amends paragraph 23.1(2)“z,” standards for electric utility steam generating units (EGUs) to remove the provisions associated with CAMR for mercury emissions for coal-fired units constructed or reconstructed after January 30, 2004. The Department is removing these provisions because the D.C. Court vacated the federal CAMR program.

Item 2 amends subrule 23.1(4) to rescind the text noting that the standards for mercury emissions from electric utility steam generating units (EGUs) are set forth in subrules 23.1(2) and 23.1(5), and in 567—Chapter 34. This rulemaking removes the federal CAMR provisions from state rules, so this cross reference will no longer be correct when this rulemaking is adopted.

Item 3 rescinds paragraph 23.1(5)“d” which contains a cross reference to the emission guidelines for mercury for coal-fired EGUs. The emission guidelines are a component of the federal CAMR program, which was vacated by the D.C. Court. Since this rulemaking will rescind the provisions in Chapter 34 that are referenced in this paragraph, the cross-reference will no longer be correct and is being rescinded.

Item 4 rescinds rule 567—25.3(455B). This rule adopted by reference the provisions for continuous emissions monitoring for CAMR. This rule is being rescinded because the D.C. Court vacated the federal CAMR program.

Item 5 rescinds rules 567—34.300(455B) through 567—34.308(455B), including Tables 3A and 3B. These are the provisions of CAMR adopted to implement the federal requirements for the program, including allocation of emissions allowances. As explained previously, the D.C. Court vacated the federal CAMR program in its entirety. A footnote is being added that explains the vacatur and indicates that the federal provisions for CAMR are no longer adopted. These rule numbers are being retained as placeholders for future air emissions trading programs.

Any person may make written suggestions or comments on the proposed amendments on or before April 14, 2009. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, fax (515)242–5094, or by electronic mail to christine.paulson@dnr.iowa.gov.

A public hearing will be held on Monday, April 13, 2009, at 1 p.m. in the conference rooms at the Department's Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa. At the public hearing, comments on the proposed amendments may be submitted orally or in writing. All comments must be received no later than Tuesday, April 14, 2009.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend paragraph 23.1(2)"z" as follows:

z. Electric utility steam generating units. An electric utility steam generating unit that is capable of combusting more than 250 million Btus per hour (73 megawatts) heat input of fossil fuel for which construction or modification or reconstruction is commenced after September 18, 1978, or an electric utility combined cycle gas turbine that is capable of combusting more than 250 million Btus per hour (73 megawatts) heat input. An electric utility steam generating unit is any fossil fuel-fired combustion unit of more than 25 megawatts electric (MW) that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MW output to any utility power distribution system for sale is also an electric utility steam generating unit. ~~This standard also includes a provision for mercury emissions for any coal fired electric utility steam generating unit other than an integrated gasification combined cycle electric steam~~

~~generating unit, for which construction or reconstruction commenced after January 30, 2004.~~

(Subpart Da)

ITEM 2. Amend subrule 23.1(4) as follows:

23.1(4) Emission standards for hazardous air pollutants for source categories. The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through July 22, 2008, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (Fbio) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4)“a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except

when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below. ~~The provisions of 40 CFR Part 60, Subparts A, B, Da, and HHHH for the Clean Air Mercury Rule (CAMR), are found at subrules 23.1(2) and 23.1(5) and in 567—Chapter 34.~~

ITEM 3. Rescind paragraph 23.1(5)”d.”

ITEM 4. Rescind rule 567—25.3(455B).

ITEM 5. Rescind rules 567—34.300(455B) through 567—34.308(455B) , including Tables 3A and 3B, and **add** the following **footnote** related to these rescissions:

*As of [insert effective date of rule], the requirements for the Clean Air Mercury Rule (CAMR) are rescinded and the adoption by reference of federal regulations associated with CAMR is also rescinded. On March 14, 2008, the United States Court of Appeals for the District of Columbia Circuit issued its mandate to vacate the federal CAMR regulations in their entirety.

Date

Richard A. Leopold, Director

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action (Vacatur of CAMR, Addition of New Mercury Monitoring Requirements)

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 23, “Emission Standards for Contaminants,” Chapter 25, “Measurement of Emissions,” and Chapter 34, “Provisions for Air Quality Emissions Trading Programs,” of the Iowa Administrative Code.

The purpose of the rule changes is to remove from the state air quality rules EPA’s Clean Air Mercury Rule (CAMR) provisions that the United States Court of Appeals for the District of Columbia Circuit (the D.C. Court) vacated. The D.C. Court found the regulations to be unauthorized under the federal Clean Air Act (CAA) or otherwise deficient. The Department is also amending the CAMR monitoring and reporting provisions to remove the vacated federal regulations that were adopted by reference and to add new mercury monitoring provisions.

The vacatur of this federal program has elicited uncertainty and confusion for regulated industries and for state and local air agencies. Although the D.C. Court vacated the federal regulations, the regulations were adopted by reference and therefore are still in effect and enforceable by the Department. The CAMR program was intended to reduce mercury emissions from coal-fired electrical steam generating units (EGUs) at the national level and was based upon participation in EPA-managed emissions trading programs. Since the federal regulations are vacated, EPA will not be running the trading program, thereby negating the need for Iowa to retain the associated federal regulations.

The Department is amending the CAMR monitoring provisions to require that affected EGUs conduct quarterly coal sampling analysis and stack testing for mercury using approved methods and to submit the results of the sampling and testing to the Department.

Item 1 amends paragraph 23.1(2)“z,” standards for electric utility steam generating units (EGUs) to remove the provisions associated with CAMR for mercury emissions for coal-fired units constructed or reconstructed after January 30, 2004. The Department is removing these provisions because the D.C. Court vacated the federal CAMR program.

Item 2 amends subrule 23.1(4) to rescind the text noting that the standards for mercury emissions from electric utility steam generating units (EGUs) are set forth in subrules 23.1(2) and 23.1(5), and in 567—Chapter 34. This rulemaking removes the federal CAMR provisions from state rules, so this cross reference will no longer be correct when this rulemaking is adopted.

Item 3 rescinds paragraph 23.1(5)“d” which contains a cross reference to the emission guidelines for mercury for coal-fired EGUs. The emission guidelines are a component of the federal CAMR program, which was vacated by the D.C. Court. Since this rulemaking will rescind the provisions in Chapter 34 that are referenced in this paragraph, the cross-reference will no longer be correct and is being rescinded.

Item 4 rescinds rule 567—25.3(455B). This rule adopted by reference the provisions for continuous emissions monitoring for CAMR. This rule is being rescinded because the D.C. Court vacated the federal CAMR program.

Item 5 rescinds rules 567—34.300(455B) through 567—34.306(455B) and 567—34.308(455B), including Tables 3A and 3B. These are the provisions of CAMR adopted to

implement the federal requirements for the program, including allocation of emissions allowances. As explained previously, the D.C. Court vacated the federal CAMR program in its entirety. A footnote is being added that explains the vacatur and indicates that the federal provisions for CAMR are no longer adopted. These rule numbers are being retained as placeholders for future air emissions trading programs.

Item 6 amends rule 567—34.307(455B) to remove the adoption by reference of the CAMR monitoring and reporting requirements for the same reasons as stated for Item 5. The amendment also includes new mercury testing provisions for facilities affected by the now-vacated CAMR provisions. The amendments require owners and operators of CAMR-affected EGUs to conduct quarterly coal sampling analyses or stack testing for mercury using approved methods and to submit the results of the sampling and testing to the Department.

Any person may make written suggestions or comments on the proposed amendments on or before April 14, 2009. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, fax (515)242–5094, or by electronic mail to christine.paulson@dnr.iowa.gov.

A public hearing will be held on Monday, April 13, 2009, at 1 p.m. in the conference rooms at the Department’s Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa. At the public hearing, comments on the proposed amendments may be submitted orally or in writing. All comments must be received no later than Tuesday, April 14, 2009.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242–5154 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend paragraph 23.1(2)“z” as follows:

z. Electric utility steam generating units. An electric utility steam generating unit that is capable of combusting more than 250 million Btus per hour (73 megawatts) heat input of fossil fuel for which construction or modification or reconstruction is commenced after September 18, 1978, or an electric utility combined cycle gas turbine that is capable of combusting more than 250 million Btus per hour (73 megawatts) heat input. An electric utility steam generating unit is any fossil fuel-fired combustion unit of more than 25 megawatts electric (MW) that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MW output to any utility power distribution system for sale is also an electric utility steam generating unit. ~~This standard also includes a provision for mercury emissions for any coal fired electric utility steam generating unit other than an integrated gasification combined cycle electric steam generating unit, for which construction or reconstruction commenced after January 30, 2004.~~

(Subpart Da)

ITEM 2. Amend subrule 23.1(4) as follows:

23.1(4) Emission standards for hazardous air pollutants for source categories. The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through July 22, 2008, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference

may be included with the subpart designation in parentheses. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (Fbio) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4)“a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below. ~~The provisions of 40 CFR Part 60, Subparts A, B, Da, and HHHH for the Clean Air Mercury Rule (CAMR), are found at subrules 23.1(2) and 23.1(5) and in 567—Chapter 34.~~

ITEM 3. Rescind paragraph 23.1(5)”d.”

ITEM 4. Rescind rule 567—25.3(455B).

ITEM 5. Rescind rules 567—34.300(455B) through 567—34.306(455B) and 567—34.308(455B), including Tables 3A and 3B, and **add** the following **footnote** related to these rescissions:

*As of [insert effective date of rule], the requirements for the Clean Air Mercury Rule (CAMR) are rescinded and the adoption by reference of federal regulations associated with CAMR is also rescinded. On March 14, 2008, the United States Court of Appeals for the District of Columbia Circuit issued its mandate to vacate the federal CAMR regulations in their entirety.

ITEM 6. Amend rule 567—34.307(455B) as follows:

567—34.307(455B) Monitoring and reporting. ~~The provisions in 40 CFR 60.4170 through 60.4176 as amended through May 18, 2005, are adopted by reference.~~ As of [insert effective date of rule], the monitoring and reporting requirements for the Clean Air Mercury Rule (CAMR) are rescinded and the adoption by reference of federal regulations associated with CAMR is rescinded. On March 14, 2008, the United States Court of Appeals for the District of Columbia Circuit issued its mandate to vacate the federal CAMR regulations in their entirety. In lieu of complying with CAMR, affected sources shall comply with the following provisions:

34.307(1) Affected sources subject to the vacated CAMR provisions with no mercury specific controls shall complete either 1) Quarterly, representative composite coal sampling for mercury that meets the sampling requirements for special purpose sampling of ASTM D2234-76, any subsequent amendment to the ASTM procedure, or any future ASTM amendment approved by the Department; or 2) Quarterly stack testing for mercury using one of the following federal reference methods: 40 CFR 60 Appendix A, Method 29, Method 30A, Method 30B, or 40 CFR

incorporated by reference in 40 CFR 60.17 is also acceptable. Affected sources subject to the vacated CAMR provisions with mercury specific controls shall complete at least one coal sample analysis using the methods described above concurrently with at least one quarterly stack test using acceptable federal reference methods.

304.307(2) Stack test notifications, protocols, and test results shall be submitted to the Department in accordance with 567 IAC 25.1(7)"a". The test results of the coal sampling shall be submitted to the Department within 60 days of completion of the testing.

304.307(3) If the affected source had previously submitted a request to EPA to be designated as Low Mass Emitters (LME) under CAMR, the owner or operator of such unit shall, by [insert date 30 days after effective date of rule] submit to the Department a request to be classified as a LME and to be exempt from sampling and testing requirements in this rule.

304.307(4) Sources subject to the requirements of Clean Air Act section 112(g) shall comply with the requirements contained in permits issued by the Department under 567 IAC 33(455B).

304.307(5) The requirements of this rule shall apply until such time as EPA rules pertaining to the operation, certification, and reporting of mercury emissions data with Continuous Emissions Monitors (CEMS) become final and effective.

Date

Richard A. Leopold, Director

Administrative Rule Fiscal Impact Statement

Date: January 26, 2009

Agency: Department of Natural Resources

IAC Citation: 567 IAC. 23.1(2)"z," 23.1(4), 23.1(5)"d," 25.3(455B), and 34.300(455B)-34.308(455B)

Agency Contact: Jim McGraw

Summary of the Rule: The purpose of the rule changes is to remove from the state air quality rules EPA's Clean Air Mercury Rule (CAMR) provisions that the United States Court of Appeals for the District of Columbia Circuit (the D.C. Court) vacated. The Department may also amend the CAMR monitoring and reporting provisions to remove the vacated federal regulations that were adopted by reference and to add alternative mercury monitoring provisions. If approved for notice, the amendments would require owners and operators of CAMR-affected EGUs to conduct quarterly coal sampling analyses or stack testing for mercury using approved methods and to submit the results of the sampling and testing to the Department.

Fill in this box if the impact meets these criteria:

- ☒ No Fiscal Impact to the State.
☐ Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.
☐ Fiscal Impact cannot be determined.

Brief Explanation:

Rule changes will not affect expenditures or revenues to the state.

Fill in the form below if the impact does not fit the criteria above:

☐ Fiscal Impact of \$100,000 annually or \$500,000 over 5 years.

* Fill in the rest of the Fiscal Impact Statement form.

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

	<u>Year 1 (FY)</u>	<u>Year 2 (FY)</u>
Revenue by Each Source:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
<i>TOTAL REVENUE</i>	<hr/>	<hr/>
Expenditures:		
GENERAL FUND		
FEDERAL FUNDS		
Other (specify)		
<i>TOTAL EXPENDITURES</i>	<hr/>	<hr/>
<i>NET IMPACT</i>		

☐ This rule is required by State law or Federal mandate.
Please identify the state or federal law:

☐ Funding has been provided for the rule change.
Please identify the amount provided and the funding source:

☒ Funding has not been provided for the rule.
Please explain how the agency will pay for the rule change:
The agency will not need additional revenue to implement this rule.

Fiscal impact to persons affected by the rule:

The vacatur of CAMR has elicited uncertainty and confusion for regulated industries and for state and local air agencies. Although the D.C. Court vacated the federal regulations, the regulations were adopted by reference and therefore are still in effect and enforceable by the Department. The CAMR program was intended to reduce mercury emissions from coal-fired electrical steam generating units (EGUs) at the national levels and was based upon participation in EPA-managed emissions trading programs. Since the federal regulations are vacated, EPA will not be running the trading program, thereby negating the need for Iowa to retain the associated federal regulations.

Since the state rules are still in effect, the affected EGUs needed to apply for variances from recordkeeping and reporting provisions contained in the CAMR regulations that were adopted by reference. Removing the federal regulations that were adopted by reference will be a benefit to affected EGUs because they will no longer need to apply for variances.

The amendments may also require affected EGUs to conduct quarterly coal sampling analysis or stack testing for mercury using approved methods. However, affected EGUs would not be required to continue to operate and collect data from the mercury continuous emissions monitors (CEMS) since the mercury monitoring methods under the vacated CAMR rules have never been approved by EPA and have been shown to be inaccurate. The annual costs for a typical investor-owned or cooperatively-owned utility for stack testing would be approximately \$500,000 and does not include the one-time costs of possibly adding testing ports on some of the stacks. This estimate is based on two stack tests per facility per quarter. The annual costs for fuel and ash analyses would be about \$10,000. This estimate is based on two samples per facility per quarter.

Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6):

Some municipal EGUs were impacted by the federal CAMR vacatur. The impacts noted above for other EGUs in the state will apply to municipal EGUs also.

* If additional explanation is needed, please attach extra pages.

Agency Representative preparing estimate: Jim McGraw
Telephone Number: 515242-5167